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EXAMINER

GWARTNEY, ELIZABETH A

ART UNIT

PAPER NUMBER

1781

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### **ATTACHMENT TO ADVISORY ACTION**

Applicants' amendment to the claims filed on 1 February 2011 has been fully considered but is denied entry because the amendment raises new issues that would require further search given that such limitations were never previously presented in the claims.

Applicants explain that they have "surprisingly found that the provision of a source of fat in the form of discrete particles distributed in the continuous phase of refrigerated mixture comprising flour, water and sugar, in accordance with the present claims, makes it possible not only to conserve the fluidity of the mixture at temperature corresponding to the usual refrigeration temperatures, but also to obtain a cooked pastry product that has desired organoleptic qualities."

Applicants argue that Hahn fails to disclose "ready-to-use" mixtures that are fluid and stable for several weeks in the refrigerated form and wherein the mixture has a flowability when measured by a Bostwick Consistometer after 40 seconds of between about 6 cm and about 12 cm at a temperature of 8° C. Instead, Applicants submit that Hahn is directed to a flour based batter that is "spoonable" at refrigeration temperatures. Applicants note that Hahn expressly states that "spoonable" means that "the consumer can readily spoon or scoop the batter from the container." In contrast, Applicants note that the present claims require a "fluid" batter wherein "fluid" means that the mixture can be poured from its packaging" and "can flow by itself without any excessive external constraint."

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Applicants note that Hahn discloses that the dough of his invention is "thicker and more viscous than conventional batters." Applicants argue that because Hahn discloses batters that are more viscous than conventional batters, the batters are not "fluid" and "pourable" as characterized by the presently claimed Bostwick consistency.

Here, given Hahn disclose a flour based mixture, which takes the form of a traditional batter (C2/L24-25), comprising water in an amount ranging from about 10% to 30% by weight, flour and sugar, which has a refrigerated shelf life of at least about 75 days, having a Aw of between 0.82 and 0.88 and chocolate particles and/or butter distributed in the mixture, one of ordinary skill in the art would have expected the batter to exhibit a Bostwick consistency in the range presently claimed. Further, while Hahn discloses batters that are more viscous than conventional batters, this does not mean that the batters are not "fluid," "pourable", or wouldn't display the presently claimed Bostwick consistency. One of ordinary skill in the art would appreciate that a batter "more viscous than traditional batters" could be "fluid" (i.e. "can be poured from its packaging" and "can flow by itself with any excessive external constraint") and exhibit Bostwick consistency within the broad range presently claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH GWARTNEY whose telephone number is (571)270-3874. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./

Examiner, Art Unit 1781

/Keith D. Hendricks/

Supervisory Patent Examiner, Art Unit 1781